IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1295 OF 2004

Shri Sanjay Anant Raul & Ors. .. Appellants

Versus

Shri Shrikant Vishnu Sawant & Ors. Respondents

Mr.M.B.Shirsat i/b N.N.Patil for appellants

Ms.Gauri Godse for respndent no.1

CORAM : P.V.KAKADE, J.

DATE : 21st JULY 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge Alibag, Raigad dated 17th February 2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge Junior Division, Alibag dated 4.10.1999 decreeing the suit for possession and mandatory injunction directing the defendants to remove the

structure on the suit property and hand over peaceful and vacant possession within a specified time. Perpetual injunction also came to be passed.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs filed the suit for possession as well as mandatory and perpetual injunction against the defendants submitting that they are owner and possessors of Survey No.23 H.No.8 admeasuring 0.08.06 HR situated at village Nagaon. There was a hut typed house in the suit property in which grand father of plaintiff no.1 and 2 and father-in-law of plaintiff no.3 namely Krishna Babaji Sawant had allowed deceased defendant no.1 and his father Ramchandra Raul to reside by oral permission. The said hut type house was completely broken in the year 1979, as a result of which oral permission of residence came to an end. Defendant no.1 was not having any other accommodation, he was allowed to reside on the suit property permitting him to construct hut and leave the property within two years after alternative accommodation was obtained, which was in the month of

January 1980. Deceased Defendant no.1 then constructed a hut type house of 25 x 18 ft. and started residing along with defendant no.2. It was the case of the plaintiffs that defendants failed to return the property and not removing the same and was occupying illegally for which notice came to be issued on 14.7.1989 cancelling the oral permission and demanding the property. The defendants contested the suit denying the allegations made by the plaintiffs and submitted that the structure on the suit land was in their possession for last more than 50 years without any interruption and therefore, they had became owners by adverse possession. It was alternative submitted by the defendants that they were licensee in view of the fact that there was Pucca construction carried out by them and thus they were protected by Section 60 of the Easements Act. On this ground the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved that defendants were their licensee on the piece of land and defendants have failed to prove that they had become owner by adverse possession. The plea regarding protection under Section 60(b) of the Easement

Act was also held to be not established and as such suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties and on the basis of available evidence came to the conclusion that the findings recorded by the trial court are legal and proper, and therefore, dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that there is no substantial question of law involved in this appeal. The only question sought to be raised is with regard to the protection of the Defendants under Section 60(b) of the Easement Act. Provision of Section 60 reads thus -

> **60. License when revocable** : A license may be revoked by the guarantor, unless -
>
> (b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

In other words, the protection would be available only

if the property is handed over to the defendants with permission to make construction of a permanent nature and then it is sought to be removed. This is not the case in the present dispute. The evidence on record is clear enough to show that the hut was standing on the suit property since the beginning and Defendants' father was given the property for permissive user for a period of two years till the alternative accommodation was found out. In other words, it is clear case that the defendants are trying to take disadvantage of the charity shown to them and their father by the plaintiffs while allowing them to reside on the property because they had no such accommodation at the relevant time. So far as issue of adverse possession is concerned, there is no iota of evidence to show that the defendants have proved their title on the suit property for continuous period of more than 12 years as alleged.

5. In these circumstances there is no substantial question of law involved in this appeal and therefore, appeal deserves to be dismissed and stands dismissed with no order as to costs.